

REMARKS

Claims 1-10 are pending. Pursuant to the Examiner's suggestion, applicant has amended claim 10 to recite "as compared to yeast cells not having been so cultured." Also pursuant to the Examiner's suggestion, applicant has amended claims 1 and 10 to replace "prevent" with "reduce the incidence of." These amendments are further discussed below in the context of the Examiner's rejections. No new matter is introduced by the amendments.

Rejection under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 1-10 for lack of enablement. Specifically, the Examiner states that although the specification enables a composition and method for treating and/or ameliorating gastritis, it does not enable one skilled in the art to prevent gastritis. The Examiner notes that "the term prevent is an absolute definition which means to stop from occurring and, as such, requires a higher standard for enablement than the instantly disclosed invention" (Office Action, p. 2). In a telephonic discussion with applicant's representative Haitao Sun on December 17, 2004, the Examiner suggests that, in light of Examples 2 and 3 of the specification, the term "prevent" be replaced with "reduce the incidence of." Applicant has amended claims 1 and 10 accordingly.

Rejection under 35 U.S.C. § 112, second paragraph

The Examiner has rejected claim 10 and claims dependent therefrom as being indefinite. Specifically, the Examiner states that claim 10 is not clear on whether the plurality of yeast cells in the presence of an alternating electric field has been modified. The Examiner suggests that, to indicate that the yeast cells have been modified, applicant insert in claim 10, after the term "mammal," the phrase "as

compared to yeast cells not having been so cultured.” Applicant has amended claim 10 accordingly.

Double patenting rejections

Claims 1-10 stand rejected, under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1-9 of United States Patent 6,709,849 (“the ‘849 patent”). Claims 1-10 stand provisionally rejected, also under the judicially created doctrine of obviousness-type double patenting, as being unpatentable over claims 1-12 of copending United States Application 10/717,132 (“the ‘132 application”), claims 1-13 of copending United States Application 10/717,136 (“the ‘136 application”), and claims 1-12 of copending United States Application 10/717,133 (“the ‘133 application”).

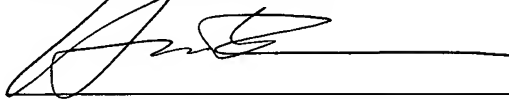
Ultra Biotech Limited, the assignee of this application, files herewith a terminal disclaimer under 37 C.F.R. § 1.321(b) and (c), disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the ‘849 patent, or any patent to be granted on the ‘132, ‘136 or ‘133 application. This rejection can now be withdrawn.

Appl. No. 10/717,143
Amdt. dated March 1, 2005
Response to December 2, 2004 Office Action

CONCLUSION

Applicant respectfully submits that the application as amended is in condition for allowance, and early, favorable action is solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Z. Ying Li', is written over a horizontal line.

Z. Ying Li (Reg. No. 42,800)

Attorney for Applicant

Haitao Sun (Reg. No. 48,546)

Agent for Applicant

Fish & Neave IP Group

Ropes & Gray LLP

Customer No. 1473

1251 Avenue of the Americas

New York, New York 10020-1104

Tel.: (212) 596-9000